

the Guptills' long distance telephone service through the other means prescribed in the Commission's rules.⁸⁷ Before the second change, BOI did not obtain authorization or verification of that authorization from either of the Guptills.

38. On February 28, 2002, BOI employee Elena Magana called Ida Guptill to market BOI's "Super Saver" plan. Shortly thereafter, BOI employee Antoinette White, who identified herself as being from Great Lakes Verification, called Mrs. Guptill.⁸⁸ The conversation between Mrs. Guptill and Ms. White appears as Attachment C of the EB Admissions Request.⁸⁹ That conversation makes no mention of the Guptills' then long distance provider and is silent about the provision of in-state long distance service.⁹⁰

39. On March 1, 2002, BOI submitted a request to Qwest to change Donald and Ida Guptill's intraLATA and interLATA service to BOI. Qwest, in turn, submitted a change order to Verizon, the Guptills' LEC.⁹¹ Verizon changed the Guptills' long distance service, both intraLATA and interLATA, to BOI that day.⁹²

40. After reviewing her March statement, which included charges from BOI, Mrs. Guptill called Verizon on March 28, 2002, to reinstate her in-state long distance service. For out-of-state service, Mrs. Guptill chose not to have any carrier designated as her

⁸⁷ BOI Admissions 314-17, 331-34.

⁸⁸ BOI Interrogatory Answers, p. 2 (Attachment 18); BOI Admissions 303-05.

⁸⁹ BOI Admissions 319, 336.

⁹⁰ EB Admissions Request, Attachment C.

⁹¹ Declaration of Jean Griffiths, pp. 1-2, 4-5 (Attachment 4); BOI Admissions 312, 329.

⁹² BOI Admissions 313, 330.

service provider.⁹³ Consequently, as of March 28, 2002, BOI was no longer the Guptills' long distance carrier.⁹⁴

41. Sometime between March 28 and April 8, 2002, BOI became aware that the Guptills no longer had its service. On April 8, 2002, BOI submitted an electronic order to Qwest to change the Guptills' intraLATA and interLATA long distance service to BOI.⁹⁵ Before doing so, BOI did not verify in any way that the Guptills wished to have their service switched to BOI.⁹⁶ In accordance with BOI's order, Qwest contacted Verizon, and Verizon changed the Guptills' in-state and out-of-state long distance service provider to BOI.⁹⁷ BOI billed the Guptills for service between April 8 and 27, 2002.⁹⁸

42. Upon review of her April telephone bill from Verizon, Mrs. Guptill noted that BOI was listed as her long distance carrier. She called BOI and canceled its service. She then called Verizon to confirm the cancellation of BOI's service. As she had previously, Mrs. Guptill opted not to have any carrier designated as her provider for state-to-state long distance.⁹⁹

⁹³ Email from Clifford Knapp to Verna Chamberlain, p. 1 (June 24, 2002) (Attachment 21).

⁹⁴ BOI Admissions 345.

⁹⁵ Declaration of Jean Griffiths, pp. 1-2, 4-5 (Attachment 4); BOI Admissions 348, 367; Verizon letter, p. 6 (Attachment 19).

⁹⁶ BOI Admissions 346, 351-62, 364, 369-80.

⁹⁷ BOI Admissions 349-50, 367-68; Declaration of Jean Griffiths, pp. 1-2, 4-5 (Attachment 4); Verizon letter, p. 6 (Attachment 19).

⁹⁸ BOI Admissions 363, 381.

⁹⁹ Declaration of Ida Guptill (Attachment 22); Verizon letter, p. 6 (Attachment 19).

43. The foregoing shows, that, once again, BOI twice failed to follow the Commission's rules in its changes of Ida Guptill's long distance telephone service. In February 2002, in violation of section 64.1120(c)(3),¹⁰⁰ BOI did not use an independent third party verifier, and, in violation of section 64.1120(c)(3)(iii),¹⁰¹ BOI's verification did not elicit the name of one of the carriers affected by the change. BOI did not inform Mrs. Guptill that the long distance change was also going to include in-state service in violation of section 64.1120(b).¹⁰² In April 2002, BOI changed Mrs. Guptill's long distance service without obtaining her (or her husband's) authorization or verification, contrary to section 64.1120(a)(1) of the Commission's rules.¹⁰³

5. Bessie Goodbrake

44. In the case of Bessie Goodbrake, a single violation occurred. BOI's admissions reveal that its representatives did not inform her that her intraLATA toll telephone service was being changed.

45. April 2002, Bessie Goodbrake, an 89 year-old woman with diminished hearing, resided in an assisted living residence in Clinton, Missouri.¹⁰⁴ Sprint Missouri was her LEC. MCI provided interLATA toll service, while Sprint local provided intraLATA toll

¹⁰⁰ 47 C.F.R. § 64.1120(c)(3) (2002).

¹⁰¹ 47 C.F.R. § 64.1120(c)(3)(iii) (2002).

¹⁰² 47 C.F.R. § 64.1120(b) (2002).

¹⁰³ 47 C.F.R. § 64.1120(a)(1) (2002).

¹⁰⁴ Declaration of [Sylvia] Jane Stack (Attachment 23).

service.¹⁰⁵ Syliva Jane Stack, Ms. Goodbrake's daughter, received and paid Ms. Goodbrake's telephone bills, and Ms. Stack's name appeared on the bill as the person to whom such bills were sent.¹⁰⁶

46. On or about April 16, 2002, BOI employee Tiffany Simms called Ms. Goodbrake for the purpose of seeking her authorization to change her long distance telephone service to BOI.¹⁰⁷ A second call from BOI employee Lekeisha Montgomery followed shortly thereafter.¹⁰⁸ From the conversations, Ms. Goodbrake understood that her callers were from the phone company and that her telephone bill was going to be cheaper. Ms. Goodbrake told her daughter about the conversations.¹⁰⁹

47. On April 16, 2002, BOI submitted requests to Qwest to change Ms. Goodbrake's intraLATA and interLATA service to BOI.¹¹⁰ Within a day or so, Qwest submitted the Goodbrake change order to Sprint, which changed Ms. Goodbrake's long distance providers to BOI from MCI and Sprint Local.¹¹¹ Before submitting the change order, BOI did not obtain Ms. Goodbrake's or Ms. Stack's written or electronically

¹⁰⁵ Letter from Mary B. Turner, Vice President Service Operations, Sprint, to Peter G. Wolfe, FCC (Dec. 4, 2002), p. 2 ("Sprint Letter") (Attachment 24); BOI Admissions 385-87.

¹⁰⁶ Declaration of [Sylvia] Jane Stack (Attachment 23).

¹⁰⁷ BOI Admissions 382-84; BOI Interrogatory Answers, p. 2 (Attachment 18).

¹⁰⁸ *Id.*

¹⁰⁹ Declaration of [Sylvia] Jane Stack (Attachment 23).

¹¹⁰ Declaration of Jean Griffiths, pp. 1-2, 4, 6 (Attachment 4); BOI Admissions 416.

¹¹¹ Sprint letter, pp. 1-2, 19 (Attachment 24); BOI Admissions 395, 418.

signed authorization, or either's electronic authorization.¹¹² Moreover, BOI did not have anyone call Ms. Stack to verify the order, and its verification, to the extent it involved Ms. Goodbrake, did not elicit the names of the carriers affected by the change in her intraLATA toll service.¹¹³

48. Sometime in mid-May, Ms. Stack received her mother's May 8, 2002 telephone bill. *The bill had almost doubled from the previous month because it included charges from BOI, specifically, two monthly service fees of \$4.90 each, imposed on April 24 and May 2, as well as two universal service fund fees of \$3.75 each, which were also dated April 24 and May 2.* Ms. Goodbrake had made no long distance calls.¹¹⁴ On or about May 20, 2002, Ms. Stack called BOI to cancel its service for her mother, and then called Sprint.¹¹⁵ After verification, Sprint changed Ms. Goodbrake's service from BOI to Sprint Long Distance for all long distance calls.¹¹⁶

49. BOI failed to fulfill its responsibilities under the rules. Specifically, contrary to section 64.1120(c)(3)(iii), BOI did not elicit the name of the local long distance provider whose place BOI was taking. Thus, its switch of Ms. Goodbrake's service was not in accordance with the Commission's rules, and, thus, not authorized.

6. Lorie J. Hart

50. BOI twice violated the Commission's verification procedures in its switches of

¹¹² BOI Admissions 396-97, 399-400, 419-20, 422-23.

¹¹³ BOI Admissions 401, 414, 424, 428.

¹¹⁴ Sprint letter, pp. 16-21 (Attachment 24).

¹¹⁵ Declaration of Sylvia Jane Stack (Attachment 23).

¹¹⁶ Sprint letter, pp. 1-2, 25 (Attachment 24).

Lorie Hart's long distance telephone service. In connection with the first change, BOI did not alert Mrs. Hart that her long distance provider was no longer going to be AT&T and that her in-state long distance service was to be switched, while, in connection with the second change, BOI simply "re-provisioned" the Harts without obtaining any authorization or verification of an authorization.

51. On February 28, 2002, BOI employee Melissa Grissom called Lorie Hart to market BOI's "Super Saver" plan.¹¹⁷ At that time, Mrs. Hart and her husband, John A. Hart, Sr., used AT&T for out-of-state calls and Bell Atlantic's (Verizon's) "Pine Tree State" service for in-state toll calls.¹¹⁸ Mrs. Hart understood from the conversation that AT&T was going out of business but that her service plan would remain unchanged.¹¹⁹

52. Shortly thereafter, BOI employee Antoinette White, who said she was from Great Lakes Verifications, called Mrs. Hart. The conversation between Ms. White and Mrs. Hart appears as Attachment D of the EB's Admissions Request.¹²⁰ The verification did not clearly inform Mrs. Hart that her then current long distance service provider was about to be changed from AT&T to BOI, nor did the verification suggest that it pertained

¹¹⁷ BOI Interrogatory Answers, p. 2 (Attachment 18).

¹¹⁸ As noted above, Paul Brackett also had "Pine Tree State" service. During the spring of 2002, that plan cost \$5.40 per month for the first 60 minutes of in-state long distance calls and then \$.08 per minute thereafter. Thus, for the 270 minutes of in-state toll calls made by the Harts between February 1 and March 3, 2002, their bill was \$22.20 before taxes. Declaration of Lorie J. Hart, pp. 1, 6-7 (Attachment 25).

¹¹⁹ *Id.*, p. 1. Documents provided by BOI reflect that Ms. Grissom's superiors were aware as early as June 2001 that she had told a prospective customer that BOI "was taking over AT&T." BUSOP 09800 (Attachment 26).

¹²⁰ BOI Admissions 435-37, 461, 479; BOI Interrogatory Answers, p. 2 (Attachment 18); EB Admissions Request, Attachment D.

to in-state toll service.¹²¹ Moreover, BOI did not obtain verification of the authorization of either Mrs. Hart, or her husband, John A. Hart, Sr., to change their long distance telephone service through the other means prescribed in the Commission's rules.¹²²

53. On March 4, 2002, BOI submitted a request to Qwest to change the Harts' intraLATA and interLATA service to BOI. Qwest, in turn, submitted a change order to TDS Telecom, the Harts' LEC.¹²³ TDS changed the Harts' intraLATA and interLATA long distance service to BOI on March 7, 2002.¹²⁴

54. The Harts' next two telephone bills from TDS showed that USBI (BOI's billing agent) was their long distance carrier and that in-state calls were billed at a rate of \$.25 per minute, while out-of-state calls were billed at \$.07 per minute. As the vast majority of the Harts' tolls calls were in-state, the change to BOI's service resulted in a dramatic increase in the Harts' telephone bill. For example, before the switch occurred, the Harts were charged \$47.56 for long distance calls made primarily in February 2002. The May 13, 2002 TDS statement, however, shows that the Harts' long distance charges had ballooned to \$89.89. Included in those charges were a USBI-imposed monthly service fee of \$4.90 and a universal service charge of \$3.75.¹²⁵

55. Sometime after TDS had changed the Harts' long distance service to BOI, Mrs.

¹²¹ BOI Admissions 464.

¹²² BOI Admissions 458-59, 476-77.

¹²³ Declaration of Jean Griffiths, pp. 1-4, 6 (Attachment 4); BOI Admissions 453, 471.

¹²⁴ Letter from Chad T. Young, General Manager – Sales & Service, TDS Telecom to Peter G. Wolfe, FCC (Dec. 2, 2002), p. 3 ("TDS Letter") (Attachment 27); BOI Admissions 473.

¹²⁵ Declaration of Lorie J. Hart, p. 2, 12-23 (Attachment 25).

Hart received a letter from AT&T, which inquired why she had made the change. Puzzled, Mrs. Hart called AT&T and related the conversation she had had with the telemarketer. Upon learning that the telemarketer had not been with AT&T, Mrs. Hart asked AT&T to change back her service.¹²⁶ AT&T did so on April 25, 2002. Following receipt of AT&T's order, TDS changed the Harts' intraLATA and interLATA long distance service to AT&T on April 26, 2002.¹²⁷ Mrs. Hart chose AT&T's "One Rate Plan," which cost \$3.95 and charged \$.07 per minute for all toll calls, whether in-state or out-of-state.¹²⁸

56. Sometime between April 26 and May 6, 2002, BOI became aware that the Harts no longer had its service. On May 6, 2002, BOI submitted an electronic order to Qwest to change the Harts' intraLATA and interLATA long distance service back to BOI.¹²⁹ Before doing so, BOI did not verify, in any way, that Mrs. Hart and her husband wished to have their service switched to BOI.¹³⁰ In accordance with BOI's order, Qwest contacted TDS on May 9, 2002, and TDS changed the Harts' long distance service provider, both for in-state and out-of-state long distance to BOI that same day.¹³¹ BOI, through USBI, billed the Harts for service between May 9 and June 13, 2002.¹³²

¹²⁶ *Id.*, p. 2 (Attachment 25).

¹²⁷ TDS Letter, p. 3 (Attachment 28).

¹²⁸ Declaration of Lorie J. Hart, pp. 2, 20, 23 (Attachment 25).

¹²⁹ Declaration of Jean Griffiths, pp. 1-2, 4, 6 (Attachment 4); BOI Admissions 494, 514.

¹³⁰ BOI Admissions 497-508, 518-528.

¹³¹ TDS Letter, p. 3 (Attachment 27); BOI Admissions 349-50, 367-68.

¹³² BOI Admissions 509, 529.

57. On June 13, 2002, Mrs. Hart called TDS. She was “very upset” that, without her consent, her long distance service had been switched again. She asked TDS to change her service back to AT&T, later modifying her request to have Bell Atlantic’s (Verizon’s) “Pine Tree State” service for her in-state toll calls. Further, she requested that TDS place a freeze on her service. Finally, she filed a complaint against BOI with the State of Maine Public Utilities Commission.¹³³

58. On July 10, 2002, Mrs. Hart went to the TDS office after receiving her most recent telephone bill, because it included USBI (BOI) charges. She and a TDS representative named Kelly called BOI and spoke with Michael Tothfalusi. The conversation recounted Mrs. Hart’s understanding concerning the initial switch to BOI and noted both the changes to AT&T in April and the switch back to BOI in May. The BOI representative related that the second switch to BOI in May 2002 had occurred pursuant to BOI’s policy “that the customer must call here to cancel the account directly” and that Mrs. Hart had never called BOI to inquire about the charges or the account.¹³⁴ Ultimately, however, the Harts received a credit for virtually all of the charges previously imposed by BOI.¹³⁵

59. As demonstrated, BOI twice failed to follow the Commission’s rules in its changes of Lorie Hart’s long distance telephone service. In connection with the change that occurred in March 2002, BOI did not use an independent third party verifier, in

¹³³ TDS Letter, pp. 2-3 (Attachment 27).

¹³⁴ *Id.*, p. 2; Details for Remark # 30469, BUSOP 02273 (Attachment 28); BOI Interrogatory Answers, p. 2 (Attachment 18).

¹³⁵ Declaration of Lorie J. Hart, pp. 2-3, (Attachment 26).

violation of section 64.1120(c)(3),¹³⁶ and BOI's verification did not elicit the name of one of the carriers affected by the change, in violation of section 64.1120(c)(3)(iii).¹³⁷

Compounding these violations, BOI did not inform Mrs. Hart that the long distance change was also going to include in-state service in violation of section 64.1120(b),¹³⁸ and its telemarketer apparently lied about the situation vis-à-vis AT&T. In May 2002, BOI changed Mrs. Hart's long distance service without obtaining her (or her husband's) authorization or verification of any such authorization, contrary to section 64.1120(a)(1) of the Commission's rules.¹³⁹ It ultimately took additional telephone calls plus a trip to TDS' offices before Mrs. Hart could rid herself of BOI and obtain credit for the charges that BOI had imposed.

7. Fred and Caroline Michaelis

60. Within a three-week period, BOI twice violated the Commission's verification procedures in its switches of Fred and Caroline Michaelis' long distance telephone service. In connection with the first change, BOI did not alert Mrs. Michaelis that her long distance provider was no longer going to be AT&T. In connection with the second change, BOI simply "re-provisioned" the Michaelises without obtaining their authorization or verification of an authorization.

61. On or about April 20, 2002, BOI employee Jason Rodmel called the home telephone number of Fred and Caroline Michaelis for the purpose of selling BOI's "Super

¹³⁶ 47 C.F.R. § 64.1120(c)(3) (2002).

¹³⁷ 47 C.F.R. § 64.1120(c)(3)(iii) (2002).

¹³⁸ 47 C.F.R. § 64.1120(b) (2002).

¹³⁹ 47 C.F.R. § 64.1120(a)(1) (2002).

Saver” plan. Mr. Rodmel spoke with Caroline Michaelis.¹⁴⁰ From that conversation, Mrs. Michaelis understood that her phone bill could be reduced and that, instead of receiving two bills, she would now get only one. She also understood that the person speaking to her was from Southwestern Bell.¹⁴¹

62. Shortly thereafter, Mrs. Michaelis spoke with BOI employee Antoinette White.¹⁴² As acknowledged by BOI, the verification undertaken by Ms. White failed to elicit all of the information required by the rules.¹⁴³ Specifically, the verification did not elicit the identity of the subscriber, confirmation that the person on the line was authorized to make the carrier change, and the names of the carriers affected by the change.¹⁴⁴ Also, BOI did not obtain verification through the other means authorized by the rules.¹⁴⁵

63. BOI submitted the change request for the Michaelises to Qwest on April 24, 2002.¹⁴⁶ That same day, Qwest forwarded the change request to SBC Southwestern Bell (“SBC”), which switched the Michaelises’ long distance service to BOI.¹⁴⁷ That day and

¹⁴⁰ BOI Admissions 532-34; BOI Interrogatory Answers, p. 2 (Attachment 18).

¹⁴¹ Declaration of Fred and Caroline Michaelis (Attachment 29).

¹⁴² BOI Interrogatory Answers, p. 2 (Attachment 18).

¹⁴³ BOI Admissions 548-49, 551, 566-67, 569.

¹⁴⁴ Fred & Caroline Michaelis Verification, BUSOP 02229 (Attachment 30).

¹⁴⁵ BOI Admissions 545-46, 563-64

¹⁴⁶ Declaration of Jean Griffiths, pp. 1-2, 4, 6 (Attachment 4).

¹⁴⁷ Letter from Terri Hoskins, Attorney, SBC, to Peter G. Wolfe, FCC (Dec. 9, 2002), p. 4 (“SBC Letter”) (Attachment 31). Initially, SBC sought confidentiality with respect to the information provided. However, by letter from Jacquelyn Fleming, SBC, to Peter G. Wolfe, FCC (Mar. 7, 2003), SBC withdrew its request. (Attachment 32)

on April 28, BOI imposed charges of \$.25 per minute for three in-state long distance calls made by the Michaelises; no state-to-state calls were made. BOI also imposed monthly service fees and “Federal Universal Service Fund” charges.¹⁴⁸

64. Within days after the switch to BOI had occurred, AT&T called Mrs. Michaelis to inquire as to why she had switched long distance service providers. After explaining that she had thought the telemarketer was from AT&T, she authorized AT&T to switch her long distance service back to AT&T.¹⁴⁹ On May 1, 2002, AT&T sent a change order to SBC, which SBC executed that day.¹⁵⁰

65. BOI noticed almost immediately that the Michaelises had been switched back. Consequently, on May 6, 2002, BOI sent a re-change order to Qwest.¹⁵¹ Before doing so, BOI did not seek or obtain the authorization of either Mr. or Mrs. Michaelis, nor did it verify in any way that such authorization had been given.¹⁵² That same day, Qwest forwarded the change order, and SBC entered it.¹⁵³ Thus, by May 7, 2002, BOI was once again the long distance service provider for the Michaelises.

66. When the May SBC bill arrived at her home, Mrs. Michaelis was shocked to see the charges imposed by BOI. On May 14, 2002, her son, Paul, contacted SBC, advised it that his parents’ telephone service had been switched without their

¹⁴⁸ May 3, 2002, Telephone bill (partial) to Fred D. Michaelis, p. 3 (Attachment 33).

¹⁴⁹ (Unsigned) letter from Caroline Michaelis to “To Whom It May Concern” (May 16, 2002) (“Caroline Michaelis Letter”) (Attachment 34).

¹⁵⁰ SBC Letter, p. 3 (Attachment 31).

¹⁵¹ BOI Admissions 584, 604; Declaration of Jean Griffiths, pp. 1, 4 (Attachment 4).

¹⁵² BOI Admissions 576-77, 580-3, 587-89 600-03, 607-09.

¹⁵³ SBC Letter, p. 3 (Attachment 31); BOI Admissions 585, 605.

authorization and that they wished to have AT&T returned as their long distance service provider.¹⁵⁴ SBC complied with the order on May 15, 2002, and, ultimately, all the charges imposed by BOI were removed.¹⁵⁵

67. Again, BOI failed on two separate occasions to follow the Commission's rules when it changed the long distance telephone service of Fred and Caroline Michaelis. In connection with the change that occurred in April 2002, BOI did not use an independent third party verifier, in violation of section 64.1120(c)(3),¹⁵⁶ and BOI's verification did not elicit the name of one of the carriers affected by the change, in violation of section 64.1120(c)(3)(iii).¹⁵⁷ Also, the verification did not address the intended change of in-state long distance service, in violation of section 64.1120(b).¹⁵⁸ In May 2002, BOI changed Mrs. Michaelis' long distance service without obtaining her (or her husband's) authorization or verification of any such authorization, contrary to section 64.1120(a)(1) of the Commission's rules.¹⁵⁹

8. Beatrice Violette

68. As with most of the other situations described above, BOI switched the long distance service of Beatrice Violette two times. The first occurred after an incomplete and faulty verification; the second occurred without any verification having been

¹⁵⁴ *Caroline Michaelis Letter* (Attachment 34); SBC Letter, p. 3 (Attachment 31)

¹⁵⁵ *Id.*, pp. 3-4 (Attachment 31).

¹⁵⁶ 47 C.F.R. § 64.1120(c)(3) (2002).

¹⁵⁷ 47 C.F.R. § 64.1120(c)(3)(iii) (2002).

¹⁵⁸ 47 C.F.R. § 64.1120(b) (2002).

¹⁵⁹ 47 C.F.R. § 64.1120(a)(1) (2002).

attempted.

69. On February 20, 2002, BOI employee Elena Magna telephoned the Violette home for the purpose of trying to sell BOI's "Super Saver" plan.¹⁶⁰ Ms. Magna spoke with Beatrice Violette.¹⁶¹ At that time, Ms. Violette and her late husband, Robert, had Verizon's "Pine Tree State" plan for in-state toll calls. As described above, that plan cost \$5.40 per month, plus \$.08 per minute for calls, once usage exceeded 60 minutes per month.¹⁶²

70. Following her conversation with Ms. Magna, Mrs. Violette also spoke with Aiada Izzario, a BOI employee, who stated that she was with Great Lakes Verification Company.¹⁶³ The transcript of their conversation appears as Attachment E of the Bureau's Admissions Request.¹⁶⁴ The conversation reflects that the verification did not elicit the names of the carriers affected by the change and that nothing was said about switching the Violettes' in-state long distance service.¹⁶⁵ BOI did not obtain verification of the switch through the other means allowed by the rules.¹⁶⁶

71. Records provided by Verizon to the State of Maine's Public Utilities Commission, as well as the Violettes' telephone bill for the period April 4 to May 3,

¹⁶⁰ BOI Admissions 620-21; BOI Interrogatory Answers, p. 2 (Attachment 18).

¹⁶¹ BOI Admissions 622.

¹⁶² Declaration of Beatrice Violette, pp. 1, 4-5 (Attachment 35).

¹⁶³ BOI Interrogatory Answers, p. 2 (Attachment 18); Transcript of July 15, 2003, Deposition of Elizabeth Ontiveros Rosas, pp. 47-48 (Attachment 36).

¹⁶⁴ BOI Admissions 634, 649; EB Admissions Request, Attachment E.

¹⁶⁵ BOI Admissions 636, 651.

¹⁶⁶ BOI Admissions 632, 646-47.

2002, evidence that someone from the Violette household called Verizon on April 12, 2002, and reordered the “Pine Tree State” plan for in-state long distance, but chose no carrier for state-to-state calls.¹⁶⁷ In any event, BOI noticed sometime between April 12 and 22, 2002, that the Violettes no longer had its service. BOI did not contact Mrs. Violette during that period. Nevertheless, on April 22, 2002, it submitted an order to Qwest to change Mrs. Violette’s intraLATA and interLATA service back to BOI. Later that day, Qwest submitted the order to Verizon, and the Violette’s service was changed to BOI as of April 23, 2002.¹⁶⁸

72. The Violettes’ telephone bill for the period April 4 – May 3, 2002, shows that, on April 23, Qwest became their long distance and regional carrier. That same statement shows four toll calls, all within the State of Maine. Each was billed at \$.25 per minute.¹⁶⁹ On May 14, Ms. Violette complained to Verizon that the change of her service to BOI had not been authorized. Consequently, Verizon changed the Violettes’ long distance service from BOI. In accordance with Ms. Violette’s instructions, Verizon changed her intraLATA service to Verizon’s “Pine Tree State” plan, and designated no carrier for state-to-state long distance.¹⁷⁰ The Violettes’ next telephone bill reflects that the charges

¹⁶⁷ Email from Clifford Knapp to Verna Chamberlain, pp. 1-2 (June 26, 2002) (Attachment 37); Declaration of Beatrice Violette, p. 9 (Attachment 35).

¹⁶⁸ BOI Admissions 656, 659, 661, 677, 679; Declaration of Jean Griffiths, pp. 1-2, 4, 6; Verizon letter, p. 8 (Attachment 19); Declaration of Beatrice Violette, p. 9 (Attachment 35).

¹⁶⁹ Declaration of Beatrice Violette, pp. 2, 9, 14 (Attachment 35).

¹⁷⁰ Verizon letter, p. 8 (Attachment 19); Declaration of Beatrice Violette, pp. 2, 14, 19 (Attachment 35).

imposed the previous months by BOI were reversed.¹⁷¹

73. With the Violettes, BOI again failed on two separate occasions to follow the Commission's rules when it changed their long distance telephone service. In connection with the change that occurred in February 2002, BOI did not use an independent third party verifier, in violation of section 64.1120(c)(3).¹⁷² BOI's verification did not elicit the name of one of the carriers affected by the change, in violation of section 64.1120(c)(3)(iii),¹⁷³ nor did it elicit recognition of a change of in-state long distance service, in violation of section 64.1120(b).¹⁷⁴ In April 2002, BOI changed Mrs. Violette's long distance service without obtaining any authorization or verification of any such authorization, contrary to section 64.1120(a)(1) of the Commission's rules.¹⁷⁵

C. Conclusions with respect to issue (b)

74. In sum, BOI failed repeatedly to comply with the Commission's requirements regarding verification. The evidence shows that on 15 separate occasions, BOI changed a household's long distance service without obtaining verification in the manner required.¹⁷⁶ For the six changes that occurred before April 8, 2002, and for two of the

¹⁷¹ *Id.*, pp. 2, 25-6 (Attachment 35).

¹⁷² 47 C.F.R. § 64.1120(c)(3) (2002).

¹⁷³ 47 C.F.R. § 64.1120(c)(3)(iii) (2002).

¹⁷⁴ 47 C.F.R. § 64.1120(b) (2002).

¹⁷⁵ 47 C.F.R. § 64.1120(a)(1) (2002).

¹⁷⁶ Seven of the unauthorized changes took place before April 8, 2002; nine occurred thereafter. The seven changes that occurred before April 8, 2002 are outside the time limit set by 47 U.S.C. § 503(b)(6) and will not be used for the purpose of establishing liability for a forfeiture. *See OSC*, 18 FCC Rcd at 6994-95 ¶ 39. However, there is no prohibition from considering them in deciding *OSC* issues (b), (e) and (f).

nine changes that occurred on April 8, 2002, or thereafter, BOI verifiers consistently failed to elicit the name of the affected carrier and the fact that the customer's in-state long distance service was about to be changed.¹⁷⁷ By never mentioning the carrier to be changed, BOI left each subscriber with the impression that his or her preferred carrier was not being changed. By never mentioning that each subscriber's in-state provider was going to change, customers had no reason to know that they were often going to be paying substantially more for BOI's in-state long distance service. In addition, as the transcripts of the various verifications reflect, BOI's verifiers consistently combined the questions as to whether the person was the authorized decision-maker and whether the person was choosing BOI as his or her preferred carrier. In the *OSC*, the Commission determined that such was confusing and therefore not allowed.¹⁷⁸ Finally, throughout the period under review, BOI never used "independent third party" verifiers, as required by the Commission's rules. BOI paid the verifiers, all of whom occupied offices in the same building as BOI's telemarketers and the bulk of its staff. In short, the evidence shows that BOI's verification procedures fell "egregiously short"¹⁷⁹ of what the Commission required.

75. For the other seven changes, all of which occurred after April 8, 2002, the

¹⁷⁷ See Motion at Motion at ¶ 15 (the Beesons in March 2002); Motion at ¶ 24 (Paul Brackett in January 2002); Motion at ¶ 31 (Norman Crowley in January 2002); Motion at ¶ 38 (the Guptills in February 2002); Motion at ¶ 52 (the Harts in February 2002); Motion at ¶ 62 (the Michaelises in April 2002); and Motion at ¶ 70 (the Violettes in February 2002). In the case of Bessie Goodbrake, whose switch occurred in April 2002, BOI did not elicit the name of the carrier that was being changed. See Motion at ¶ 47.

¹⁷⁸ 18 FCC Rcd at 6990-91 ¶ 23.

¹⁷⁹ *Id.* ¶ 24.

evidence shows that BOI simply “re-provisioned” the customer to its own service. As discussed, “re-provisioning” involved BOI’s switching of a customer’s long distance service back to BOI without BOI ever obtaining the customer’s authorization or bothering to use any of the three verification methods prescribed by the Commission. In the cases described, this “re-provisioning” occurred even though that customer had affirmatively elected to stop BOI’s service. The evidence also shows that BOI’s “re-provisioning” was no accident; it occurred as a direct consequence of a policy formulated by BOI’s top management to address the perceived problem of how to staunch the loss of customers.¹⁸⁰ Thus, in those instances where “re-provisioning” occurred BOI plainly did not comply with the Commission’s rules governing verification.

76. The evidence thus shows that BOI willfully and repeatedly failed to comply with the requirements of 47 C.F.R. 64.1120 and 47 U.S.C. § 258. Issue (b), which called for the Commission to determine whether Business Options, Inc. changed consumers’ preferred carrier without their authorization in willful or repeated violation of section 258 of the Act and sections 64.1100-1190 of the Commission’s rules, must be resolved against BOI.

II. BOI Failed to File FCC Form 499-A

77. Section 64.1195 of the Commission’s rules¹⁸¹ requires telecommunications

¹⁸⁰ See, generally, Motion at ¶ 8. See also Motion at ¶ 19 (the Beesons in April 2002); Motion at ¶ 27 (Paul Brackett in May 2002); Motion at ¶ 34 (Norman Crowley in April 2002); Motion at ¶ 41 (the Guptills in April 2002); Motion at ¶ 56 (the Harts in May 2002); Motion at ¶ 65 (the Michaelises in May 2002); and Motion at ¶ 71 (the Violettes in April 2002).

¹⁸¹ 47 C.F.R. § 64.1195.

carriers that will provide interstate telecommunications service to file registration information. Any carrier already providing service on the effective date of the rule was to submit the relevant portion of FCC Form 499-A in accordance with the form's instructions. The rule became effective April 2, 2002, following OMB's approval of the revised FCC Form 499-A, and accompanying instructions, on March 1, 2001.¹⁸² Inasmuch as the instructions provide that forms are due April 1, the first FCC Form 499-A to be filed pursuant to new section 64.1195 of the rules was due April 1, 2002.¹⁸³ By that date, all common carriers were to provide information for calendar year 2001.¹⁸⁴ The filing obligation extended to each legal entity that provides telecommunications service for a fee.¹⁸⁵ Prior to the filing deadline, Commission staff twice reminded common carriers of their obligations to register by using the revised form.¹⁸⁶

78. As acknowledged by BOI, it has operated as a common carrier since at least January 1, 2000.¹⁸⁷ During that period, BOI has had between 40,000 and 52,000 customers.¹⁸⁸ BOI's services include the provision of both intraLATA/intrastate toll and

¹⁸² See 66 FR 17083, March 29, 2001.

¹⁸³ FCC Form 499-A Instructions, p. 8.

¹⁸⁴ *Id.*, p. 4.

¹⁸⁵ *Id.*, p. 7.

¹⁸⁶ *Public Notice, Common Carrier Bureau Announces Release of Telecommunications Reporting Worksheet (FCC Form 499-A) for April 1, 2002 Filing by All Telecommunications Carriers*, 17 FCC Rcd 4315 (CCB 2002); *Public Notice, Consumer Information Bureau Reminds Telecommunications Carriers of Their Obligations to Register and Designate an Agent for Service of Process*, 17 FCC Rcd 1736 (CIB 2002).

¹⁸⁷ BOI Admissions 1-4.

¹⁸⁸ Transcript of July 15, 2003, Deposition of Elizabeth Ontiveros Rosas, pp. 7, 23-5 (Attachment 38).

interLATA/interstate toll telephone service.¹⁸⁹ Indeed, one of BOI's principal selling points discussed above was its low cost-per-minute charge for state-to-state telephone calls.¹⁹⁰ Thus, there can be no doubt that BOI was a telecommunications carrier that provided an interstate telecommunications service from at least January 1, 2000, to the present.¹⁹¹

79. Notwithstanding its status as an interstate telecommunications carrier, BOI did not file an FCC Form 499-A on April 1, 2002. Indeed, as of the time of its Admissions (June 19, 2003), BOI had yet to file an FCC Form 499-A.¹⁹² Consequently, BOI violated section 64.1195 of the rules;¹⁹³ issue (c) must be resolved against BOI.

III. BOI Discontinued Service to Customers in Vermont without Commission Authorization

80. Section 214 of the Act, in pertinent part, provides that: "No carrier shall discontinue ... service to a community ... unless and until there shall first have been obtained from the Commission a certificate that neither the present nor future public

¹⁸⁹ Transcript of July 14, 2003, Deposition of Kurtis Kintzel, pp. 23-8, 101-8 (Attachment 39).

¹⁹⁰ See Section I A, *supra*.

¹⁹¹ See also BOI Admissions 750.

¹⁹² BOI Admissions 751. Although Buzz Telecom filed an FCC Form 499-A in October 2002, it reported that it had no income (Attachment 40). Considering that Buzz did not even come into existence until June 2002, its report, which was to cover calendar year 2001, was inherently deceptive and can have no relevance in determining whether BOI met its obligation to register under 47 C.F.R. § 64.1195. It is the Bureau's understanding that BOI did ultimately file FCC Form 499-A and its predecessor forms in September 2003.

¹⁹³ 47 C.F.R. § 64.1195 (2002).

convenience and necessity will be adversely affected thereby....”¹⁹⁴ Section 63.71 of the Commission’s rules sets forth the procedures that a domestic carrier such as BOI must follow before it may discontinue service. Among other things, a carrier must give notice in writing to each of its affected customers that service is about to be discontinued, and, in the case of a non-dominant carrier, advise each customer that the Commission will normally authorize the proposed discontinuance unless the customer shows that it will be unable to receive service or a reasonable substitute from another carrier.¹⁹⁵ The notice must also advise that the customer has 15 days after receipt of the notice to object to the Commission.¹⁹⁶ On or after the date notice has been given to all affected customers, the carrier must file with the Commission an application that informs the Commission, *inter alia*, about the carrier, the date, nature and extent of its planned service discontinuance, and a description of the dates and methods of notice to all affected customers.¹⁹⁷ The application of a non-dominant carrier will be granted automatically on the 31st day after its filing unless the Commission notifies it that such automatic grant will not be made.¹⁹⁸ However, an application is not deemed to be filed unless and until the Commission releases public notice of the filing.¹⁹⁹

81. BOI and the Department of Public Service of the State of Vermont (the

¹⁹⁴ 47 U.S.C. § 214(a).

¹⁹⁵ 47 C.F.R. § 63.71(a).

¹⁹⁶ *Id.*

¹⁹⁷ 47 C.F.R. § 63.71(b).

¹⁹⁸ 47 C.F.R. § 63.71(c).

¹⁹⁹ *Id.*

“VDPS”), reached a stipulation dated September 18, 2002, that, upon approval of the stipulation by the Vermont Public Service Board (the “VBoard”), BOI would cease providing service in Vermont in conformance with the requirements of 47 C.F.R. § 63.71.²⁰⁰ On November 7, 2002, the VBoard approved the stipulation.²⁰¹ On November 19, 2002, counsel for the VDPS sent BOI a letter, which reminded BOI of the stipulation and its obligation to initiate the discontinuance process outlined in 47 C.F.R. § 63.71.²⁰²

82. After receiving a follow-up facsimile from counsel for the VDPS, Kurtis Kintzel directed new BOI employee Shannon Dennie to carry out the matters agreed to in the stipulation.²⁰³ Among other things, BOI drafted and sent a letter to its Vermont customers, which informed them that, effective December 21, 2002, BOI “is disconnecting its Vermont customers from” BOI long distance.²⁰⁴ BOI mailed its Vermont disconnection letter on December 10, 2002.²⁰⁵ BOI’s letter did not include the statement mandated by 47 C.F.R. § 63.71(a)(5).²⁰⁶

²⁰⁰ BOI Admissions 697-98, 700-01. *See also* EB Admissions Request Attachment F.

²⁰¹ BOI Admissions 706. *See also* EB Admissions Request Attachment H.

²⁰² BOI Admissions 712-13. *See also* EB Admissions Request Attachment I.

²⁰³ Transcript of the July 14, 2003, Deposition of Kurtis Kintzel, pp. 187-88 (Attachment 41); Transcript of the July 16, 2003, Deposition of Shannon Dennie, pp. 42, 48-9 (Attachment 42).

²⁰⁴ BOI Admissions 742. *See also* EB Admissions Request Attachment K.

²⁰⁵ “Section 63.71 Application,” dated December 20, 2002, by BOI, p. 4, ¶ 10 (EB Admissions Request Attachment J) (“Discontinuance Application”). *See also* BOI Admissions 719.

²⁰⁶ BOI Admissions 744.

83. Although dated December 20, 2002, BOI's Discontinuance Application was not received at the Commission until December 27, 2002.²⁰⁷ By that time, BOI had stopped serving customers in Vermont.²⁰⁸ In any event, the Commission notified BOI that BOI's Discontinuance Application was not satisfactory, and, consequently, never put BOI's Discontinuance Application on public notice.²⁰⁹

84. As noted above, 47 C.F.R. § 63.71 prescribes that a carrier may not discontinue service before receiving Commission approval that it may do so. Commission approval, while often automatic, can only occur either 15 or 31 days after the Commission releases public notice of the application's filing. In this case, however, the Commission never issued a public notice of the filing, and, indeed, informed BOI that it was dissatisfied with BOI's Discontinuance Application. Nevertheless, BOI stopped serving customers in Vermont before the Commission had even received its application seeking authority to discontinue service. Thus, it is beyond dispute that BOI discontinued service without Commission authorization, in willful violation of section 214 of the Act and section 63.71 of the Commission's rules. Issue (d) must be resolved against BOI.²¹⁰

²⁰⁷ BOI Admissions 720.

²⁰⁸ Transcript of the July 14, 2003, Deposition of Kurtis Kintzel, p. 185 (Attachment 43).

²⁰⁹ Transcript of the July 16, 2003, Deposition of Shannon Dennie, p. 52 (Attachment 44); Declarations of John Adams and Jon Minkoff (Attachment 45).

²¹⁰ The Bureau recognizes that the *OSC* also refers to 47 C.F.R. § 63.505. That section, however, details the contents of applications for any type of discontinuance "not specifically provided for in this part." Inasmuch as the applications for discontinuance of service by a domestic carrier, such as BOI, are indeed specifically provided for in 47 C.F.R. § 63.71, the Bureau is not contending that BOI also violated 47 C.F.R. § 63.505.

IV. Conclusion

85. As demonstrated above, BOI has willfully and repeatedly failed to comply with 47 U.S.C. § 258 and 47 C.F.R. § 64.1120, which require a carrier's compliance with Commission verification procedures before the carrier may switch a customer's long distance telephone service. In nine instances, BOI's verification procedures failed to elicit information prescribed by the Commission's rules, while in seven other cases, BOI simply switched customers back to its service without even seeking their permission to do so, much less verifying that it had such permission. BOI also willfully and repeatedly failed to file its FCC Form 499-A, contrary to the requirements set forth in 47 C.F.R. 64.1195. In this regard, BOI, by the time it filed its Admissions, had not yet filed the form, which had been due on April 1, 2002. Finally, BOI discontinued service to customers in Vermont before receiving Commission authorization to do so, contrary to 47 U.S.C. § 214 and 47 C.F.R. § 63.71.

86. As the Bureau's Motion demonstrates, "the truth is clear" and "the basic facts are undisputed." *Big Country Radio, Inc* , 50 FCC 2d 967 (Rev. Bd. 1975). Thus, because there is no genuine issue of material fact for determination at a hearing, summary

decision is warranted. Issues (b), (c) and (d) must be resolved against BOI.

Respectfully submitted,



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October 27, 2003

CERTIFICATE OF SERVICE

Moris Martinez, a clerk in the Enforcement Bureau's Investigations and Hearings Division, certifies that he has, on this 27th of October, 2003, sent by first class United States mail or hand-served a copy of the foregoing "Enforcement Bureau's Motion to Partial Summary Decision" to:

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